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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,325	11/13/2000	Robert Allan Unger	50P4201	6874

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EXAMINER

NALEVANKO, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action**Application No.**

09/711,325

Applicant(s)

UNGER, ROBERT ALLAN

Examiner

Christopher R Nalevanko

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____

Claim(s) objected to: _____


Claim(s) rejected: 3-8, 11-16, 18, 19 and 21-28.

Claim(s) withdrawn from consideration: 1, 2, 9, 10, 17 and 20.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


CHRIS GRANT
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues, regarding Claim 23, that "the combination of Jerding and Bahraini fails to teach or suggest using two tuners concurrently, a control channel tuner and a programming tuner, to locate a control channel. As represented by the Office, Jerding teaches a set-top including two tuners, and Bahraini teaches using a single tuner to scan for a control channel. However, neither reference teaches or suggests a set-top unit that includes and concurrently uses two tuners to scan a frequency band to locate a control channel" (page 12 lines 9-14). Examiner asserts that Jerding clearly shows a control channel tuner, or out-of-band tuner (page 2 section 0022), and a programming tuner (page 2 section 0022). Bahraini clearly shows scanning available frequencies for a control channel (page 1 sections 0008-0011). Bahraini is merely used to show that scanning a frequency range for a control channel is well known and expected in the art. Jerding is used to show multiple tuners for receiving different frequencies. In the previous Office Action, it is stated that neither Jerding nor Bahraini show controlling the tuners concurrently. This is the reason for the Official Notice given. Official Notice is given that it is well known and expected in the art to control two tuners at the same time. This allows the system to perform multiple tasks without the need to wait for instructions to be completed by one of the tuners. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Jerding and Bahraini with the ability to control both of the tuners at the same time so that the system could access both tuners independently with individual instruction sets. Furthermore, the Applicant has not requested the Examiner to provide additional art supporting the Official Notice. If the Applicant requires proof of the Official Notice, please see col. 12 lines 35-45 of Robbins et al 6,807,676. Robbins clearly shows using two tuners concurrently. This reference is merely provided to support the Examiner's Official Notice statement. Regarding Claim 28, arguments similar to Claim 23 are made. See the response with regards to Claim 23. Regarding Claim 6, Applicant argues that "the combination further fails to teach or suggest dividing a frequency band among the two tuners as described in Claim 6" (page 13 lines 221-2). Examiner asserts that it was never stated that these two pieces of art show splitting up the frequency band among two tuners. This is the reason for the Official Notice. Regarding the Official Notice, the Examiner maintains his assertion that it is well known and expected in the art to split up a task between plural, but similar, components to facilitate processing and speed up computational calculations. This method is used widely in all types of systems to enable a process to complete a task more quickly. Not only is this used widely in the electronic art, but it is well known and expected that splitting up a task into smaller portions is advantageous to the overall efficiency of the process. An example of this includes using multiple processors in a computer system to divide instructions. Furthermore, the Applicant has not requested the Examiner to provide additional art supporting the Official Notice. If the Applicant requires proof of the Official Notice, please see col. 5 lines 20-55 of Heberle et al 5,220,580. Heberle clearly shows dividing a frequency spectrum between components to facilitate a faster search. This reference is merely provided to support the Examiner's Official Notice. Regarding Claim 3, Applicant argues "the combination of Jerding and Bahraini fails to teach or suggest using two tuners to search for a control channel. The combination further fails to teach or suggest using two tuners as described in claim 3, one to search for active signals and one to determine if the an active signal, once located, is a control channel" (page 14 lines 21-24). Examiner asserts that Jerding clearly shows a control tuner (or out-of-band tuner), a programming tuner (or in-band tuner) (page 1 section 0003, page 2 sections 0022-0024), and a processor for controlling the tuners (fig. 2 item 24, page 2 section 0024, 0025). Furthermore, since Jerding specifically states that one of the tuners is for a control channel, this tuner must locate an active signal, or control channel. The only aspect that is not described in Jerding is the actual scanning process of finding the active frequencies. Bahraini is used to teach the scanning for an active frequencies. Bahraini shows controlling the tuner to tune frequencies in the frequency band to identify active signals and tuning the tuner to the control channel (page 1 sections 0007-0010). Also, since Jerding shows a dedicated control tuner, it is inherent that this tuner tunes to an active signal to locate the control channel. If the control tuner has found a signal that is a control channel, this signal is inherently an active signal. It serve no function to tune the control channel tuner to a signal that was not active and could not function as a data receiving means.



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